

RECORDING REQUESTED BY:  
Redevelopment Agency of the City of Stockton  
425 North El Dorado Street  
Stockton, California 95202

**DOC # 2002-196806**

11/04/2002 08:59A Fee:NC

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Recorded in Official Records

County of San Joaquin

GARY W. FREEMAN

Assessor-Recorder-County Clerk

Paid by SHOWN ON DOCUMENT

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control  
Site Mitigation Program  
8800 Cal Center Drive, Suite 350  
Sacramento, California 95826  
Attention: James L. Tjosvold, P.E., Chief  
Northern California-Central  
Cleanup Operations Branch



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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

## COVENANT TO RESTRICT USE OF PROPERTY

### ENVIRONMENTAL RESTRICTION

Re: San Joaquin County, Assessor's Parcel Number 139-090-02.

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This Covenant and Agreement ("Covenant") is made by and between the Redevelopment Agency of the City of Stockton (the "Covenantor"), the current owner of property situated in Stockton, County of San Joaquin, State of California, depicted in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

### ARTICLE I STATEMENT OF FACTS

1.01. The Property, totaling approximately 1.9-acres is more particularly depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by East Channel Street on the north, North El Dorado Street on the east, East Weber Avenue on the south, and North Center Street on the west, County of San Joaquin, State of California. This property is more specifically described as San Joaquin County Assessor's Parcel No.(s): 139-090-02.



1.02. The Property is being remediated pursuant to an Oversight and Consultation Agreement pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code, under the oversight of the Department. A Revised Preliminary Endangerment Assessment Report, approved by the Department on March 13, 2000, requires that a deed restriction be recorded as part of the site remediation, because lead, benzo (a) pyrene, benzene, toluene, ethylbenzene, xylenes, methyl tert-butyl ether (MTBE), which are hazardous substances, as defined in H&SC section 25316, and a hazardous material as defined in H&SC section 25260, were detected in groundwater, soil, and sediment samples, below the surface of the Property. Pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq., the Department has reviewed a Draft Supplemental Environmental Impact Report/Environmental Assessment (Draft EIR/EA) dated January 12, 2000. The Department commented on the Draft EIR/EA in a letter dated February 23, 2000. Both the Draft EIR/EA and the Department's comment letter identified the need for a deed restriction for the Weber Block Project.

1.03. As detailed in the Revised Preliminary Endangerment Assessment approved by the Department on March 13, 2000, all or a portion of the subsurface soil, and sediment within the Stockton Channel of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following contaminants of concern at the following maximum concentration: benzo (a) pyrene (1.2 milligram/kilogram (mg/kg)), lead (206 mg/kg), and arsenic (22.1 mg/kg). Groundwater near the former Shell site on the Property ranged from 16 to 19 feet below ground surface during the monitoring events conducted in July 1998, October 1998, January 1999, and April 1999. Maximum contaminant concentrations in groundwater monitoring of eleven wells include: benzene (2.6 milligrams/liter (mg/l)), toluene (8.3 mg/l), ethylbenzene (2.2 mg/l), xylenes (9.5 mg/l), methyl tertiary-butyl ether (MTBE) (1.75 mg/l), and total petroleum hydrocarbons (47 mg/l). Maximum contaminant concentration in an unfiltered groundwater sample collected from the south side of the Stockton Channel contained lead at 75.3 ug/l. In a Report dated October 6, 2000, by Baseline Environmental Consulting, the groundwater in the area from the south side of the Stockton Channel was re-sampled. This sample was filtered prior to analysis. The analysis of this groundwater sample for total lead was reported at a concentration of less than 3.0 ug/l, the laboratory reporting limit.

Based on the Final Risk Assessment the calculated excess lifetime cancer risk from soil ingestion and dermal contact for the Site was  $2.3 \times 10^{-5}$ , which exceeds the  $1 \times 10^{-6}$  cancer risk level. The largest contributor to the risk from this exposure pathway was from benzo(a)pyrene. The excess lifetime cancer risk from groundwater ingestion and showering/bathing with volatile organic compounds and non-volatile organic compounds, as calculated using on-site groundwater data, was  $1.1 \times 10^{-5}$ . The largest contributor to the risk from this exposure pathway was benzene. The cumulative excess cancer risk from soil ingestion and dermal contact, groundwater ingestion and showering/bathing with shallow groundwater underlying the Site, ambient air, and indoor air was calculated to be  $3.3 \times 10^{-5}$ .





Based on these calculations, the Department determined that use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to commercial and industrial, parks, open space, or as a water square/public meeting place as the Redevelopment Agency of the City of Stockton has proposed in the approved Revised Preliminary Endangerment Assessment. The Department further recognizes that natural attenuation of chemicals of concern may occur over time. If land uses were to be proposed in the future, which are currently prohibited, additional risk evaluations must be undertaken, including collection of additional soil and/or groundwater samples, and submitted to the Department for review and concurrence.

## ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

## ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors,





and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

#### ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining,



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moving or disturbing the soils and/or sediments in or on the Property.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Extraction of shallow groundwater for purposes other than site remediation or construction dewatering.

4.04. Non-Interference with Groundwater Remediation System (GRS). Covenantor agrees:

- (a) All uses and development of the Property shall preserve the integrity and physical accessibility of any GRS, which may be required by San Joaquin County Environmental Health Division or the Regional Water Quality Control Board.

4.05. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

## ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner, or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

## ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they



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apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

## ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of San Joaquin within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Redevelopment Agency of the City of Stockton  
425 North El Dorado Street  
Stockton, California 95202

To Department:

James L. Tjosvold, P.E., Chief  
Northern California-Central Cleanup Operations Branch  
8800 Cal Center Drive, Suite 350  
Sacramento, California 95826

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.





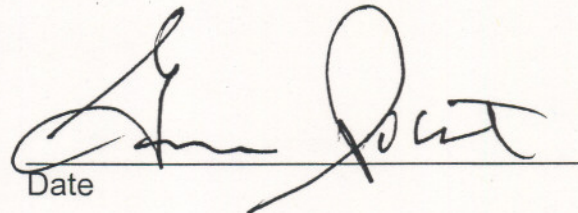
7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

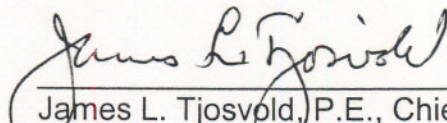
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

\_\_\_\_\_  
Gary Podesto, Chairperson  
Stockton Redevelopment Agency

  
Date

Department of Toxic Substances Control:

  
James L. Tjosvold, P.E., Chief  
Northern California-Central Cleanup Operations Branch  
Department of Toxic Substances Control

\_\_\_\_\_  
Date

11/1/02



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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sacramento

SS.

On

11/01/02

Date

before me,

Betty J. Engle

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

James L. Tjosvold

Name of Signer(s)



☒ personally known to me

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Betty J. Engle  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document:

Deed Restriction

Document Date:

11/1/02

Number of Pages:

9

Signer(s) Other Than Named Above:

Gary Podesta

### Capacity(ies) Claimed by Signer

Signer's Name:

James L. Tjosvold

☒ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer Is Representing:

DTSC

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here





STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

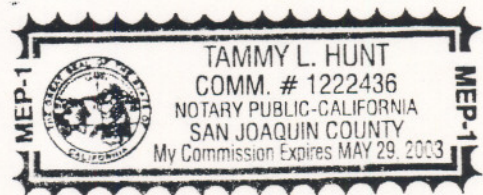
On this 28<sup>th</sup> day of October, in the year 2002,

before me Tammy L. Hunt, Notary Public, personally appeared  
Gary A. Podesto

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is ~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Tammy L. Hunt



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CHANNEL ST

CENTER ST

EL DORADO ST

WEBER AV

FORMER  
SHELL  
STATION

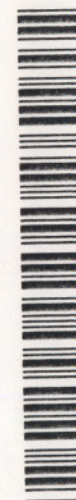
CANOPIES

EXISTING SEAWALL LOCATION

TEMPORARY OR  
PERMANENT  
SHEETPILE  
SEAWALL

EXHIBIT A

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FIG

avement



0 50 feet

note.  
ed on the most current information available to the  
nation System Division. The information on this map  
ing, financial or primary records research.

SITE LAYOUT MAP  
Weber Block Site (Area 9)  
Stockton, San Joaquin County, California